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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re C.Z., et al., Persons Coming Under  
the Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.C. et al.,

Defendants and Appellants.

B214159

(Los Angeles County Super. Ct.  
No. CK71527)

APPEAL from an order of the Superior Court of Los Angeles County,  
Stephen Marpet, Juvenile Court Referee. Affirmed.

Karen B. Stalter, under appointment by the Court of Appeal, for Defendant  
and Appellant Father D.C.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant  
and Appellant Mother F.S.

Kimberly A. Knill, under appointment by the Court of Appeal, for  
Defendants and Appellants Minors M.Z., A.C. and D.C.

James M. Owens, Assistant County Counsel, Navid Nakhjavani, Senior  
Associate County Counsel, for Plaintiff and Respondent.

## ***SUMMARY***

This is an appeal from the dependency court's jurisdictional and dispositional orders as to three children. We affirm.

## ***FACTUAL AND PROCEDURAL SYNOPSIS***

In January 2008, C.Z. (then 16) was "picked up as a run[]away" and detained at the Los Angeles County Sheriff's Department. She said she had been raped by her stepfather D.C. and did not want to return home. She said she was raped 4 or 5 times 3 years earlier when she was in 7th or 8th grade, when her family was living in Compton and her mother was working while her father was unemployed. When she returned from school, she said, she would go to her room to change and her stepfather would force her into his bedroom, pull down her pants and sexually violate her, sometimes vaginally, sometimes anally, although she kept telling him "No." She said, he would say, "Hold on, hold on, I'm about to come," and when he was done, he would get up, wipe himself off with a T-shirt, and she would run from the room. She said she did not tell her mother until December 2007.

A social worker from the Department of Children and Family Services responded to the station and interviewed C.Z. as well as her mother F.S. and stepfather D.C. when they arrived. According to the detention report, C.Z. also told the social worker she had been raped. She said D.C. threatened her that if she told anyone, he would end up in jail and "something bad would happen to her." She said she hadn't told anyone until the past year because she was scared. She told her mother on December 30, 2007, but her mother and siblings did not believe her. She thought they did not believe her because she had run away a few times, but she said she ran away because of her problems. Asked what she meant, she said she ran away because of the rape. Asked if she was concerned about her siblings, she said she was not sure about her sister M.Z. (then 14) because she "never

talked about anything,” but did not think D.C. would harm her younger siblings (A.C., then 5, and Da.C., then 4—D.C.’s biological children). She thought her stepfather had “targeted” her because she looked like her biological father (who is not a party to this appeal).

F.S. was crying and “visibly shaken” during her interview. Both F.S. and D.C. denied the allegations of abuse. F.S. said C.Z. had a history of making false statements, claiming D.C. had punched her when she had gotten into a fight with someone else days earlier, and telling her mother she was in Texas although she was in Los Angeles. She said C.Z. had started acting out because of her desire for a relationship with her biological father. D.C. said C.Z. was just doing the same thing again but agreed to remain out of the house.

The social worker spoke with M.Z. who said she and her sisters were never alone with anyone as they always had a babysitter. The siblings all stated they felt happy and safe in the home.

A few days later, the social worker spoke with F.S. again. F.S. said C.Z. had recanted her allegations when they visited her at the group home where she had been placed. Because of the conflicting accounts, the social worker scheduled a forensic interview with Rosanna Beaumont, M.A., at the Harbor UCLA Child Crisis Center, and F.S. agreed to attend.

Both C.Z.’s and F.S.’s interviews were observed from an adjoining room by a multidisciplinary assessment team (comprised of social workers, a clinical psychologist and a detective). Asked for her perspective on C.Z.’s allegations, F.S. “wavered, at times saying maybe it happened and C.Z. should have come to her but at other times saying C.Z. had lied so much that she didn’t believe her.”

C.Z.’s account was consistent with her initial reports to the police and social worker and included further specific and “very personal” details which made it seem “unlikely” she was fabricating. For example, she described seeing blood at the time of the first rape and thinking it meant she had gotten her period but then realizing it wasn’t

and feeling she was “damaged.”<sup>1</sup> She did not recant her allegations and denied she had ever recanted to her mother. When she told her mother the rapes had occurred when F.S. was working at the cleaners, F.S. said they couldn’t have occurred as she had taken C.Z. to a babysitter. When C.Z. said there was no sitter when D.C. was home, she told her mother to call D.C. and put her on speaker phone. C.Z. confronted him, and he was silent until the phone “ran out of minutes.” Only her mother said, “It’s a lie.” She decided she never wanted to talk about it with her mother, but later when she was in her placement and they spoke again, her mother said, “I’m sorry.” C.Z. said she did not want to be away from her mother because she loves her. According to Rosanna Beaumont, M.A., the team discussed the interviews and believed C.Z.’s disclosure of rape was the truth. C.Z. was scheduled for a physical exam and was subsequently referred for an ultrasound and examination by an endocrinologist.

F.S. said relatives were unwilling to have C.Z. in their home because of her history of running away and lying and C.Z. wanted to stay at her group home placement because her mother did not believe her. F.S. said she wanted C.Z. to remain there for her safety. C.Z.’s siblings were detained from D.C. and remained with F.S.

In February 2008, the Department of Children and Family Services filed a petition, alleging (as relevant here) D.C. had sexually abused C.Z. on prior occasions in 2005 when she was 13 and that F.S. had failed to protect her so that C.Z., M.Z., A.C. and D.C. were all at risk. (Welf. & Inst. Code, § 300, subds. (b), (d) and (j) [all undesignated statutory references are to the Welfare and Institutions Code unless otherwise noted].)

In its jurisdiction and disposition report, the Department noted prior allegations (in June 2007, May 2006 and July 2006) of abuse against D.C. but all were deemed “unfounded.” D.C. said C.Z. was making up the allegations because she was disappointed in her own father and he (D.C.) had told her “I told you so” so she was mad. C.Z.’s

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<sup>1</sup> C.Z. thought the rapes were the reason she still had not gotten her period although she was 16 at the time of her interview. She was concerned about this delay and thought it was because of how “he hurt [her].”

godmother said C.Z. told her daughter D.C. had raped her several times but only told her (the godmother) about one time. She didn't know if it "really happened." She told C.Z. she needed to talk to her mother about it. "She told me her mother wasn't going to believe her." C.Z. continued to maintain the details of the rapes as she had described.

In May, it was reported C.Z. had run away from her group home three weeks earlier.<sup>2</sup> The dependency court issued a protective custody warrant for C.Z. (and sanctioned the Department for the delay in notification). C.Z. contacted her sister M.Z. the following week, stating in an e-mail, "It's so F\*\*cking hard. I'm the one who looks more like my dad . . . Don't worry. Tell mom I'm okay and not to worry. I'm not going back to no foster home." F.S. said she did not know what C.Z. meant but still did not believe her.

In July, F.S. wanted to proceed with the hearing because of the stress and hardship to her family. The siblings' counsel said there had been no evidence of risk to the other children. The court continued the matter for contest in September, keeping all orders in place.

When C.Z.'s whereabouts were still unknown, both F.S. and D.C. asked the court to proceed without delay. The court requested authority regarding proceeding in her absence and continued the matter, advising the parties to be prepared to go to trial.

The parties submitted points and authorities in October for the continued adjudication hearing. After argument, the trial court denied motions to dismiss the matter because of C.Z.'s absence. When the dependency court received the various reports into evidence, D.C. objected the reports contained hearsay.<sup>3</sup> The court responded that

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<sup>2</sup> Because of a staff shortage at the group home, C.Z. had missed five therapy sessions ordered for her.

<sup>3</sup> Both F.S. and D.C. refer to the "Title XX's" and requested inclusion of these documents in the record after noting their absence from the clerk's transcript. However, the clerk of the superior court executed a certificate of missing documents on May 18,

objections under section 355 “should have been made a long, long, long time ago.” D.C. again objected the forensic interview report was hearsay. Noting the report was part of C.Z.’s medical records, the court overruled the objection.

Ms. Beaumont testified at length regarding her interviews with C.Z. and F.S. She described C.Z.’s sad demeanor, the tone and quality of her voice, the details of her statements and the reasons why she believed C.Z. F.S. and D.C. moved to dismiss the case pursuant to section 350, subdivision (c). Noting the consistency of C.Z.’s statements to police, the social worker and the forensic examiner, the dependency court found the “required indicia of reliability.”

At the continued hearing in January 2009, F.S. testified.<sup>4</sup> She said the problems started when C.Z.’s father reentered her life one year before the filing of the case; before that, she said, C.Z. and D.C. had a “good relationship.” When the dependency court reviewed the three referrals against D.C. before that time, F.S. said she did not remember them. She denied she had told the social worker C.Z. had recanted her allegations, confirming she knew recanting meant saying “it didn’t happen.” She said it was impossible for the rapes to have occurred because she was “in the house with them 24 hours.” She said she “never” left the girls alone with D.C. When she went to the grocery store, the children “always” came with her. She said she had not ever worked. F.S. said D.C. was a trucker, and the children were not ever left alone with him. He was asleep and did not want to be bothered she said. D.C. never had any time alone with his own children because “we have always been together all the time.” She acknowledged he had been unemployed 2 or 3 years in the past 5 years so there had been days and weeks when he was not working. When the court inquired whether F.S. had ever worked at a

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2009, after conducting a search for these records and requesting that the Department provide copies.

<sup>4</sup> There had been several continuances because of a child’s and counsel’s illness, counsel’s jury service and a “miscommunication” between counsel and clients.

cleaners, F.S. admitted that she had but said she was still able to pick up the kids from school, they could take the bus in the morning and later her girlfriend helped her.

After hearing F.S.'s testimony, the dependency court stated "I find the mother's testimony not to be credible" "on crucial issues" and reiterated that at the time of the section 350, subdivision (c) hearing, the Department had sustained its burden of proof and the testimony presented did not change the court's mind. Accordingly, the petition was sustained under subdivisions (b), (d) and (j) of section 300.

F.S., D.C. and the siblings appeal.

### ***DISCUSSION***

According to F.S., D.C. and the siblings, the dependency court erred in finding the objections to the hearsay statements untimely and improperly admitted the reports containing C.Z.'s statements because she was unavailable for cross-examination; as a result, the court's order was not supported by substantial evidence.<sup>5</sup> We disagree.

At a jurisdictional hearing, the court must first consider only the question whether the minors are persons described by section 300, by a preponderance of the evidence standard. (§ 355, subd. (a).) Any legally admissible evidence relevant to the circumstances may be admitted (*ibid.*), and pursuant to subdivision (b) of section 355, the social studies prepared by the petitioning agency and hearsay evidence contained in such reports is admissible and constitutes competent evidence upon which a finding of jurisdiction under section 300 may be based to the extent allowed by subdivisions (c) and (d).

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<sup>5</sup> We note F.S. filed a request for judicial notice of the dependency court's order of May 6, 2009, terminating jurisdiction as to M.Z., A.C. and D.C. but also requested resolution of this appeal on the merits as the dependency court's prior findings could detrimentally affect the mother, father and children in the future. Because dismissal of an appeal operates as an affirmation of the underlying judgment or order, we consider the merits. (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1489.)

Subdivision (c)(1) provides that if timely objection is made to the admission of specific hearsay evidence in the social study, the specific hearsay evidence shall not be sufficient *by itself* to support a jurisdictional finding or ultimate fact upon which a jurisdictional finding is based, *unless* the petitioner establishes one or more of the following exceptions: (A) it would be admissible in civil or criminal proceeding under any statutory or decisional exception, (B) the minor is under 12, (C) the hearsay declarant is a peace officer, health care worker, social worker or teacher as defined in the statute, or (D) the hearsay declarant is available for cross-examination.<sup>6</sup> Under subdivision (d), this section does not limit the right to subpoena witnesses or introduce admissible evidence relevant to the weight of the hearsay or credibility of the hearsay declarant.

Even leaving to one side the timeliness of D.C.'s and F.S.'s objections to the evidence under section 355 in C.Z.'s absence (the Department did produce Ms. Beaumont (and Dr. Benavides although no party chose to call her as a witness) to testify as to their own statements), timely objection does not render the statements inadmissible; rather the objection means that "uncorroborated, the hearsay statements did not constitute substantial evidence and could not be used as the exclusive basis for finding jurisdiction under section 300." (*In re B.D.* (2007) 156 Cal.App.4th 975, 984.) Here, the record establishes that the dependency court did not improperly rely *solely* on C.Z.'s hearsay statements in contravention of section 355.<sup>7</sup> Rather, Ms. Beaumont's testimony

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<sup>6</sup> For purposes of this subdivision, objection is timely if it identifies with reasonable specificity the disputed hearsay evidence and it gives the petitioner a reasonable period of time to meet the objection prior to a contested hearing.

<sup>7</sup> "To be sure, we stated in *Malinda S.* [(1990) 51 Cal.3d 368, 377] that 'elements of objectivity and expertise lend [social studies] a degree of reliability and trustworthiness.' [Citation.] But as noted, although such expertise goes toward ensuring that 'social studies will generally contain accurate reports of interviews with children, the statements of the children themselves found therein do not necessarily possess any particular guaranties of reliability.' [Citation.] Thus, the inclusion of hearsay statements in a social study does not cure the due process problem inherent in *solely* relying on the out-of-court



regarding C.Z.'s demeanor, tone and other details supporting the conclusion that C.Z.'s statements were truthful constitutes corroboration. Moreover, F.S.'s incredible testimony and the "inferences therefrom" further corroborated C.Z.'s account; corroboration need not establish the precise facts testified to, and may instead be slight as long as it tends to strengthen or confirm the hearsay statements. (*In re B.D.*, *supra*, 156 Cal.App.4th at pp. 984-985 [the requirement is somewhat analogous to the rule in criminal law requiring independent corroborative proof of accomplice testimony].) Applying this standard, the evidence in the record provided corroboration for C.Z.'s hearsay statements. (*Ibid.*) We examine the record to determine whether the requisite corroboration has been proven; the weight to be given such evidence is for the dependency court to resolve. (*Ibid.*) The assertion that there was no corroboration for C.Z.'s statements ignores the record.<sup>8</sup> Accordingly, the order is affirmed.

***DISPOSITION***

The order is affirmed.

**WOODS, J.**

**We concur:**

**PERLUSS, P.J.**

**ZELON, J.**

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statements of a minor unavailable for cross-examination." (*In re Lucero* (2000) 22 Cal.4th 1227, 1245, italics added.)

<sup>8</sup> Moreover, the dependency court specifically found the consistency of C.Z.'s statements provided the "sufficient indicia of reliability." (See *In re Lucero*, *supra*, 22 Cal.4th 1227, 1249, fn. 7.)